

# MANDATE

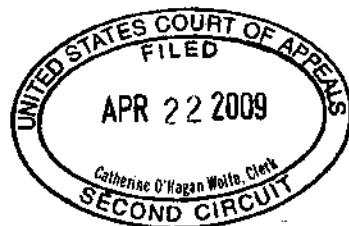
E.D.N.Y. (BENY)  
01-cv-3023  
Glasser, J.

## United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 22<sup>nd</sup> day of April, 2009, two thousand nine,

Present:

Hon. Joseph M. McLaughlin,  
Hon. Guido Calabresi,  
Hon. Robert A. Katzmann,  
*Circuit Judges.*



Nulux, Inc.,

*Plaintiff-Appellant,*

v.

08-5862-cv

Rafael Ramirez, et al.,

*Defendants-Appellees.*

Appellant, through counsel, moves to voluntarily withdraw its appeal pursuant to "Local Rule 42(a)." Neither this Court's local rules nor the Federal Rules of Appellate Procedure have a provision that allows withdrawal of an appeal. This Court, however, has authority to grant a voluntary dismissal of an appeal under Rule 42(b) of the Federal Rules of Appellate Procedure. Accordingly, this Court shall construe Appellant's motion as a request for voluntary dismissal without prejudice. *See United States v. Outen*, 286 F.3d 622, 631 (2d Cir. 2002); *Hertzner v. Henderson*, 292 F.3d 302, 304 (2d Cir. 2002).

Upon due consideration, it is hereby ORDERED that the motion is GRANTED and the appeal is hereby DISMISSED without prejudice to Appellant's right, if any, to pursue further relief.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk

By:

SAO-MRR

A TRUE COPY  
Catherine O'Hagan Wolfe, Clerk  
by

MAY 13 2009

ISSUED AS MANDATE:

CLERK CLERK